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Filed

JAN 18 2013

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF COURT
SAN JOSE CALIFORNIA

6   UNITED STATES DISTRICT COURT

7   NORTHERN DISTRICT OF CALIFORNIA

8   SAN JOSE DIVISION

9 LAURA GENS, | CASE NO. 5:12-CV-05947 EJD

10   Plaintiff, | **Date of Hearing: March 29, 2013**
                                       | **Time of Hearing: 9:00 pm**
11   v. | **Courtroom:**

12 CAL-WESTERN RECONVEYANCE | **MEMORANDUM IN OPPOSITION TO**
    CORPORATION, and WELLS FARGO, | **DEFENDANTS MOTION TO DISMISS**
13
            Defendants.
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18 **I. INTRODUCTION**

19   Plaintiff does not waive any rights to remand this case to state court as requested in her

20 motion to remand currently pending. Nor does plaintiff waive any rights afforded her under 28

21 U,S,C, §362.

22   Plaintiff has never sued these defendants in this Court. This case was removed by

23 defendants from state court. Plaintiff prepared and filed a skeleton complaint in state court

24 expecting to file a much more comprehensive, amended complaint. Defendants removed this

25 case and within a few days filed a motion to dismiss. With the filing of this opposition, plaintiff

26 moved this court for the right to file an amended complaint.

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   _____
   MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS

II. LEGAL ARGUMENTS

A. Plaintiff's First Cause of Action.

Contrary to defendant's unsubstantiated statements, plaintiff has shown in the complaint that the July 11, 2012 Notice of Trustee's Sale does not conform to statutory standards. If allowed, plaintiff can plead further detail about the violations of Cal.Civ.Code §2924(g) by defendants.

Given an opportunity, plaintiff can plead that plaintiff did tender the entire amount owed with not one, but two different lenders. The tender was made prior to the date of the Notice of Default. The facts plead also will pierce the privilege otherwise afforded under Civil Code §§ 47 and 2924(d) that the defendants acted maliciously when enforcing its security interst.

This claim clearly does not duplicate any prior claims in substance or form.

B. Plaintiff's Second Cause of Action.

Plaintiff can plead that plaintiff did tender the entire amount owed with not one, but two different lenders. The tender was made prior to the date of the Notice of Default.

This claim does not duplicate any prior claims in form or substance.

C. Plaintiff's Third Cause of Action.

Plaintiff can plead that plaintiff did tender the entire amount owed with not one, but two different lenders. The tender was made prior to the date of the Notice of Default.

This claim does not duplicate any prior claims in form or substance.

D. Plaintiff's Causes of Action are Not Preempted by the Home Owner's Loan Act (HOLA).

Plaintiff can plead that plaintiff's claims are not preempted by HOLA as this was not necessary in state court. The facts will show both that the defendants actions do not fall under the provisions of 12 C.F.R. §560.2 (b) as mere "processing" or "servicing". Furthermore, other facts will demonstrate a vital state court claim through a vital Truth In Lending Act claim.

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1   Again, this claim does not duplicate any prior claims in substance or form.

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3 **III. CONCLUSION**

4   This Court should deny the motion to dismiss and allow plaintiff the opportunity to amend

5 the complaint which she was denied when this case was removed to federal court and the filing by

6 defendants' of a motion to dismiss as a quickly-filed, first pleading. Should the Court otherwise

7 be inclined to grant Defendants' motions, Plaintiff requests the opportunity to amend the

8 complaint.

9 This opposition is being filed with the clerk's office and served to defendants through the ECF.

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11 I declare under penalty of perjury under the laws of the State of California that all of the
   statements made in this Opposition are true and correct. Executed at Palo Alto, CA.

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13 Dated: January 17, 2013

14   _Laura Gens_ (signature)
                                                _____
15   Laura Gens
                                                Plaintiff
16   In Pro Per

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